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To: The Commission

Centennial Communications, Inc. ("Centennial"), pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, hereby submits these comments in response to the Second Further Notice of Proposed Rulemaking issued by the Commission in the above-captioned proceeding.<sup>1</sup> Through its *Second Further Notice*, the Commission seeks, *inter alia*, comment regarding the proposed relaxation of its duopoly rules, as well as the grandfathering of certain television local marketing agreements ("LMAs") if, as proposed in its companion *Attribution Further Notice*,<sup>2</sup> the Commission ultimately

2     *In the Matter of Review of the Commission's Regulations  
Governing Attribution of Broadcast and Cable/MDS  
Interests*, MM Docket No. 94-150, FCC 96-436 (released  
November 7, 1996). ("Attribution Further Notice").

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decides that television LMAs should be attributable for purposes of its multiple ownership rules.

## **I. INTRODUCTION AND SUMMARY**

Centennial is the licensee of television station WGNT, Channel 27, Portsmouth-Norfolk, Virginia. WGNT serves the Norfolk-Portsmouth-Newport News-Hampton market, the country's 40th largest designated market area ("Norfolk DMA").

Seven commercial broadcast stations, three VHF and four UHF, serve the Norfolk DMA.<sup>3</sup> WGNT, a UHF station, is the only locally-owned independent station in the market. The three VHF stations are affiliated with the three major networks and are owned by major groups, i.e., WTKR-TV, Channel 3, CBS, The New York Times Co.; WAVY-TV, NBC, Channel 10, LIN Television Corp. ("LIN"), and WVEC-TV, Channel 13, ABC, A.H. Belo Corp. Broadcast Division. WTVZ, Channel 33, is a Fox affiliate licensed to the Sinclair Broadcast Group, Inc.; and WJCB, Channel 49, is a religious station licensed to Tidewater Christian Communications

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Centennial is filing comments in response to the *Attribution Further Notice* simultaneously herewith.

<sup>3</sup> An additional UHF channel, Channel 21, has been allotted to the Norfolk market. Twenty applications for that channel are pending; it is not likely to have a competitive impact in the near future.

Corp.<sup>4</sup> The remaining UHF station, WVBT, Channel 43, a Warner Bros. affiliate, is operated by LIN, licensee of the NBC affiliate, under an LMA. WVBT will become a Fox affiliate in September of 1998.

It is difficult for a locally-owned independent station such as WGNT to survive in a marketplace where it competes against major group owners with network-affiliated VHF outlets, as well as a UHF Fox affiliate run by a major group. A relaxation of the duopoly rule or the perpetual grandfathering of existing LMAs will make it virtually impossible. To ensure the continued viability of stations like WGNT, which serves the public interest by virtue of its local ownership and unique programming, the Commission's rules and policies governing television duopolies and television LMAs must be crafted so as not to enhance the already formidable competitive advantages inherent in group ownership and/or assignment to a VHF channel.

As indicated in its comments filed in response to the *TV Ownership Further Notice*,<sup>5</sup> and as further demonstrated below, Centennial believes its experience in the Norfolk DMA demonstrates why the Commission should: (1) retain its

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<sup>4</sup> It is Centennial's understanding that an application for assignment of the license for WJCB to Lockwood Broadcasting currently is pending.

<sup>5</sup> *Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rulemaking*, 10 FCC Rcd 3524 (1995) ("TV Ownership Further Notice").

Grade B contour overlap prohibition for VHF stations; (2) treat time brokerage of another television station for more than fifteen percent (15%) of the brokered station's weekly broadcast hours as being attributable (therefore as counting toward the brokered licensee's multiple ownership limits); and (3) grandfather only those existing television LMAs that predate enactment of the Telecommunications Act of 1996, and impose a two-year sunset provision on grandfathered LMAs.

## **II. DISCUSSION**

Centennial firmly believes that there is no public interest benefit to be gained through relaxation of the Commission's rules to permit same-market television combinations, whether through ownership or LMA, particularly VHF/VHF combinations or any combinations involving stations held by group owners. The proposals advocated by the Commission will serve only to foster potentially anticompetitive and diversity-reducing mergers.

### **A. A Same-Market Combination in the Norfolk DMA Has Worked to Disserve the Public Interest**

Centennial's experience in the Norfolk DMA illustrates precisely how same-market combinations work to disserve the public interest. LIN, operator of NBC affiliate WAVY, also runs UHF station WVBT, a Warner Bros. affiliate, through an LMA. To the public's detriment, a great deal of the

programming now aired on WVBT duplicates that aired on WAVY. Thus, the independent voice that was WVBT virtually has been silenced.

Further, LIN's LMA has skewed drastically the competitive marketplace in favor of the group owner. As a result of its LMA agreement, LIN broadcasts NBC programming not cleared for WAVY over WVBT. LIN's significant leverage as owner of the dominant NBC affiliate combined with the additional outlet provided by WVBT has foreclosed a variety of competitive opportunities for other stations in the market. For example, because LIN preferred to air Atlantic Coast Conference ("ACC") football on WAVY, independent WGNT was able to carry NBC's Notre Dame football. Now, Notre Dame football is aired on WVBT, depriving WGNT of a significant programming source. Similarly, WGNT was able to air ACC basketball games not cleared on WAVY. Those games are now run on WVBT. WGNT is unable to bid on certain syndicated programming, as LIN broadcasts over WVBT syndicated programming originally purchased for WAVY.

As a result of LIN's LMA, therefore, program diversity has been significantly reduced -- viewers in the local market receive a great degree of duplicative programming, effectively reducing the number of television voices within the marketplace from seven to six. In addition, the LMA confers upon LIN a distinct competitive advantage in the program distribution and advertising markets. LIN's competitive advantage will become even more acute once WVBT

affiliates with Fox -- WAVY currently commands a 26.7% local market share. That, combined with the 15-16% share typically garnered by Fox affiliates, will give LIN 42% of the Norfolk market share.

**B The Commission Should Retain the Grade B Overlap Standard**

The Commission seeks, through its local television ownership rule, to promote diversity, particularly program and viewpoint diversity. Further, the Commission intends to foster the competitive operation of broadcast television stations' program distribution and advertising markets. As illustrated above, in Centennial's experience, same-market television combinations serve only to undermine both objectives. In response to the Commission's request for comment, Centennial submits that relaxation of the Grade B overlap standard in favor of a Grade A/DMA approach will reduce program diversity and create anticompetitive consequences.

Broadcast television stations with overlapping Grade B signal contours, whether in the same DMA or not, compete for viewers and advertising dollars. Under the Commission's proposed modification, common ownership of two stations in different DMAs with overlapping Grade B contours would be permissible. However, such a combination will cause viewers that previously had access over the airwaves to two separately owned stations to have one fewer

source of programming available to them. This problem would be particularly acute for viewers who do not subscribe to cable.

From a competitive standpoint, a relaxation of the local television ownership rule would only serve to make the weak weaker, diminishing the chances that minorities, women, and/or small, local entrepreneurs could enter or survive in the television business. Group owners, who already have a distinct competitive advantage in bidding for programming by virtue of the number of stations they control nationwide, would gain even more concentrated power should they be permitted to dominate a local market, narrowing access to programs for the little guys, i.e., single, independent stations.

For example, by virtue of the number of stations it controls nationwide, group owner Sinclair was able to procure the syndication rights to popular programs like *Friends* and *Frasier*. Because of Sinclair's group deal, WGNT was not even afforded the opportunity to bid on these programs for the Norfolk market. Should group owners like Sinclair be permitted to acquire a second television outlet in their existing markets through relaxation of the duopoly rules, stand-alones like WGNT will have next to no chance of acquiring the type of programming they need in order to survive. Thus, the continued viability of such stations, whose ability to serve the public has long been recognized by the Commission, would be threatened.

**C. The Commission Should Attribute LMAs for Purposes of Its Local Television Ownership Rule and Should Limit Grandfathering of Existing LMAs**

Currently, the Commission does not attribute television LMAs for local and national ownership purposes; therefore, these relationships are not subject to the Commission's ownership rules. As detailed in its comments in response to the *Attribution Further Notice* being filed simultaneously herewith, Centennial believes that LMAs should be attributable for purposes of applying the Commission's ownership rules.

The Commission has indicated that, in adopting rules to govern the use of television LMAs, it may be guided by the rules currently applicable to the radio industry. Radio station ownership is attributed to any radio licensee who enters into an LMA with another radio station if the agreement involves the brokering of more than 15% of the station's weekly broadcast hours. More significantly, the Commission allows duopoly ownership and same market LMAs in radio.

While the Commission may have determined that such combinations are beneficial in the radio context, Centennial again emphasizes that same-market combinations have worked and will continue to work to disserve the public interest in the television context. Centennial cautions the Commission, therefore, not to assume that the reasoning through which it justified relaxation of the



ownership rules and policies governing the radio industry can equally be applied to television.

First, given the relatively large number of radio outlets in any given market, the public interest in ensuring a diversity of viewpoints is not materially threatened through joint ownership of radio stations within the same market. The number of broadcast outlets in the television service, however, is appreciably different. For example, in WGNT's market there are more than thirty-five commercial radio stations -- but only seven commercial television stations. Duplication of television programming has a much more drastic effect upon viewpoint diversity, therefore, than does duplication of radio programming.

Further, the marketing and programming distinctions between radio and television warrant different standards for television. For example, major network affiliation, in terms of programming provided and compensation, is critical in television. In radio, networks are, at best, a limited source of programming. The nature of television programming, i.e., network, off-network, syndicated and film packages, and its availability, cost, and the manner in which it is sold, are quite different from radio, which emphasizes format and on-air personalities.

The *Second Further Notice* requests comment on the Commission's proposal to grandfather all television LMAs entered into before November 5, 1996, subject to renewability and transferability guidelines similar to

those governing radio LMAs. As stated above, Centennial believes that the Commission must retain its prohibition on television duopolies; whether these combinations result through joint ownership or LMAs is irrelevant, as there exists no real world distinction. Should the Commission retain its existing duopoly rule and attribute television LMAs to the brokering station, the grandfathering of existing LMAs, given their proliferation, would, in many instances, eviscerate the duopoly rule's protection.

At a minimum, Centennial submits that any grandfathering of LMAs should be limited to LMAs that predate the enactment of the Telecommunications Act of 1996, i.e., February 8, 1996. Parties entering into LMAs prior to the adoption of the *Second Further Notice* had ample warning, through the *TV Ownership Further Notice*, that they were proceeding at their own risk and would not be unfairly impacted by any decision to invalidate LMAs entered into after February 8, 1996. Further, any grandfathering should be limited to a two-year sunset provision, providing ample time for licensees to make alternative arrangements. Existing LMAs should not be transferable or renewable.

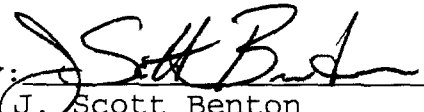
### **III. CONCLUSION**

For the foregoing reasons, Centennial submits that the Commission should: (1) retain its Grade B contour overlap prohibition, at least for VHF stations; (2) treat time

brokerage of another television station for more than fifteen percent (15%) of the brokered station's weekly broadcast hours as being attributable (therefore as counting toward the brokered licensee's multiple ownership limits); and (3) grandfather only those existing television LMAs that predate February 8, 1996, and impose on grandfathered LMAs a two-year sunset provision.

Respectfully submitted,

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